

REMARKS

Favorable reconsideration and allowance of the subject application are respectfully requested. Claims 1-17 are pending in the present application, with claims 1, 4, and 17 being independent.

The Examiner has required election in the present application between:

Group I, claims 1-3, drawn to method for determining an interior temperature;

Group II, claims 4-16, drawn to temperature sensor; and

Group III, claim 17, drawn to method for determining and adjusting temperature.

For the purpose of examination of the present application, Applicant elects, with traverse, Group I, Claims 1-3.

First, Applicant notes that MPEP §803 recites in pertinent part that “If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions,” emphasis added. The Examiner points out in the Office Action that claims 1-17 are each classified in class 374. Thus, an examination of each of claims 1-17 can be made without serious burden.

Second, Applicant respectfully submits that the Examiner failed to meet the burden required to substantiate a restriction requirement. The Examiner quotes MPEP 806.05(e), which recites in part that a “[p]rocess and apparatus for its practice can be shown to be distinct inventions, if either or both of the following can be shown: (A) that the process as claimed can be practiced by another materially different apparatus or by hand; or (B) that the apparatus as claimed can be used to practice another and materially different process.”

The Examiner, however, failed to show that the process/apparatus can be practiced by or can be used to practice another and material different apparatus/process. The Examiner merely identifies which features are not recited between independent claims 1, 4, and 17, (e.g., a sensor for determining an air flow or a sensor for measuring sun radiation). However, in order to substantiate a proper restriction requirement, the Examiner cannot rely on the breadth of a claim. The Examiner must show that the process/apparatus can be practiced by or can be used to practice another and material different apparatus/process. As noted in MPEP 806.05(e), “the burden is on the examiner to document another materially different process or apparatus or withdraw the requirement,” emphasis added.

Accordingly, Applicant respectfully requests that the Examiner withdraw the restriction requirement and Examiner each of claims 1-17 on the merits.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Martin R. Geissler, Registration No 51,011 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

- ☒ Attached is a Petition for Extension of Time.
- ☒ Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for

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any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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